



ENVIRONMENTAL PROTECTION AGENCY

[FRL-9917-31-Region-1]

Notice of Availability of Draft NPDES General Permit for Stormwater Discharges from Small Municipal Separate Storm Sewer Systems in Massachusetts

AGENCY: Environmental Protection Agency.

ACTION: Notice of Availability of Draft NPDES General Permit.

SUMMARY: The Director of the Office of Ecosystem Protection, Environmental Protection Agency-Region 1 (EPA), is providing this Notice of Availability of a draft National Pollutant Discharge Elimination System (NPDES) general permit for stormwater discharges from small Municipal Separate Storm Sewer Systems (MS4s) to certain waters of the Commonwealth of Massachusetts. The draft NPDES general permit establishes Notice of Intent (NOI) requirements, prohibitions, and management practices for stormwater discharges from small MS4s. EPA has substantially modified the previous two draft general permits released on February 4, 2010 and March 18, 2010 and is issuing a new draft general permit for all eligible MS4s in Massachusetts.

DATES: Comments must be received on or before **[insert date 90 days after publication in the Federal Register]**.

ADDRESSES: Submit comments by one of the following methods:

- Email: Tedder.Newton@epa.gov
- Mail: Newton Tedder, US EPA – Region 1, 5 Post Office Square – Suite 100, Mail Code – OEP06-4, Boston, MA 02109-3912.

No facsimiles (faxes) will be accepted.

The draft permit is based on an administrative record available for public review at EPA-Region 1, Office of Ecosystem Protection, 5 Post Office Square – Suite 100, Boston, Massachusetts 02109-3912. A reasonable fee may be charged for copying requests. The fact sheet for the draft permit sets forth principal facts and the significant factual, legal, methodological and policy questions considered in the development of the draft permit and is available upon request. A brief summary is provided as SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the draft permit may be obtained between the hours of 9:00 a.m. and 5:00 p.m. Monday through Friday excluding legal holidays from: Newton Tedder, Office of Ecosystem Protection, Environmental Protection Agency, 5 Post Office Square – Suite 100, Boston, MA 02109-3912; telephone: 617-918-1038; email: Tedder.Newton@epa.gov

SUPPLEMENTARY INFORMATION:

Public Comment Information

Public Hearing Information: EPA will hold a public hearing in accordance with 40 CFR 124.12 and will provide interested parties with the opportunity to provide written and/or oral comments

for the official draft permit record. The public hearing will be held Wednesday, November 19, 2014 from at 1:00pm at the following location: Leominster Public Library (Community Room), 30 West Street, Leominster, Massachusetts 01453. An Alternate date in case of cancelation due to inclement weather or other emergency is Wednesday, December 3, 2014 at the same location.

The public comment process and the public hearing will be conducted in accordance with 40 CFR 124, EPA's Procedures for Decision making. EPA will consider and respond to all significant comments before taking final action. The general permit shall be effective on the date specified in the Federal Register publication of the Notice of Availability of the final general permit. The final general permit will expire five years from the effective date.

All persons, including applicants, who believe any condition of the draft permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position by the close of the public comment period, either by submitting written comments to the EPA New England Regional Office listed in the **ADDRESSES** section of this Federal Register, or by submitting written or oral comments at the public hearing. Any supporting materials which are submitted shall be included in full and may not be incorporated by reference, unless they are already part of the administrative record in this proceeding, or consist of State or Federal statutes and regulations, EPA documents of general applicability, or other generally available reference materials.

Background of Proposed Permit

EPA is proposing to reissue three draft NPDES general permits for the discharge of stormwater from small MS4s to certain waters within the commonwealth of Massachusetts. The three permits are:

MAR041000 – Traditional cities and towns

MAR042000 – Non-traditional state, federal, county and other publicly owned systems

MAR043000 – Non-traditional transportation systems

While these are technically distinct permits, for convenience we have grouped them together in a single document and have provided a single fact sheet for all three of them, and this document refers to the draft general “permit” in the singular. The draft general permit, appendices, and fact sheet are available at:

http://www.epa.gov/region1/npdes/stormwater/MS4_MA.html.

The conditions in the draft permit are established pursuant to Clean Water Act (CWA) section 402(p)(3)(iii) to ensure that pollutant discharges from small MS4s are reduced to the Maximum Extent Practicable (MEP), protect water quality, and satisfy the appropriate requirements of the CWA. The regulations at 40 CFR 122.26(b)(16) define a small municipal separate storm sewer system as “all separate storm sewers that are:

- (1) Owned or operated by the United States, a State, city, town, borough, county, parish, district, association, or other public body (created by or pursuant to State law) having jurisdiction over disposal of sewage, industrial wastes, stormwater, or other wastes, including special districts under State law such as a sewer district, flood control district or drainage district, or similar entity, or an Indian tribe or an authorized Indian tribal organization, or a designated

and approved management agency under section 208 of the CWA that discharges to waters of the United States.

- (2) Not defined as ‘large’ or ‘medium’ municipal separate storm sewer systems pursuant to paragraphs (b)(4) or (b)(7) or designated under paragraph (a)(1)(v) of this section [40 CFR 122.26].
- (3) This term includes systems similar to separate storm sewer systems in municipalities such as systems at military bases, large hospital or prison complexes, and highways or other thoroughfares. The term does not include separate storm sewers in very discrete areas, such as individual buildings.”

EPA issued a final general permit to address stormwater discharges from small MS4s on May 1, 2003. The 2003 general permit required small MS4s to develop and implement a Stormwater Management Program (SWMP) designed to control pollutants to the maximum extent practicable and protect water quality. This draft permit builds on the requirements of the previous general permit.

During 2010 EPA issued two separate draft Small MS4 General permits to replace the 2003 Small MS4 permit for eligible Operators located Massachusetts; one for Operators located in the North Coastal watershed and the other for those located in the Interstate, Merrimack and South Coastal watersheds. Based on comments and information gathered while developing responses, EPA has modified the initial draft general permits and is issuing a single new draft permit covering all eligible operators in Massachusetts pursuant to 40 CFR 124.6. The changes to the draft general permit include, but are not limited to: provisions addressing discharges to

impaired waters with and without an approved Total Maximum Daily Load and illicit discharge detection elimination and monitoring provisions. The draft general permit has also been revised to provide for coverage to MS4s that became subject to NPDES permit requirements with the issuance of updated urbanized area delineations based on the results of the 2010 Census.

Please note that the new Draft Permit completely supersedes both 2010 draft permits, and EPA is providing an entirely new comment period under 40 CFR 124.10. Consequently, all persons who believe any condition of the new Draft Permit is inappropriate must raise all reasonably ascertainable issues and submit all reasonably available arguments supporting their position during this public comment period, which includes the public hearing.

Obtaining Authorization

In order for a small MS4 to obtain authorization to discharge, it must submit a complete and accurate NOI containing the information in Appendix E of the draft general permit. The NOI must be submitted within 90 days of the effective date of the final permit. The effective date of the final permit will be specified in the Federal Register publication of the Notice of Availability of the final permit. A small MS4 must meet the eligibility requirements of the general permit found in Part 1.2 and Part 1.9 prior to submission of its NOI. A small MS4 will be authorized to discharge under the permit upon receipt of written notice from EPA following a public notice of the submitted NOI. EPA will authorize the discharge, request additional information, or require the small MS4 to apply for an alternative permit or an individual permit.

Non-Numeric Effluent Limitations

When EPA has not promulgated effluent limitation guidelines for a category of discharges, or if an operator is discharging a pollutant not covered by an effluent limitation guideline, permit limitations may be based on the best professional judgment (BPJ) of the agency or permit writer. For this permit, effluent limits are based on BPJ. The BPJ limits in this permit are in the form of non-numeric control measures, commonly referred to as best management practices (BMPs). Non-numeric limits are employed under limited circumstances, as described in 40 CFR § 122.44(k). EPA has interpreted the CWA to allow BMPs to take the place of numeric effluent limitations under certain circumstances. 40 CFR § 122.44(k), provides that permits may include BMPs to control or abate the discharge of pollutants when: “(1)[a]uthorized under section 304(e) of the CWA for the control of toxic pollutants and hazardous substances from ancillary industrial activities; (2) [a]uthorized under section 402(p) of the CWA for the control of stormwater discharges; (3) [n]umeric effluent limitations are infeasible; or (4) [t]he practices are reasonable to achieve effluent limitations and standards or to carry out the purpose of the CWA.” The permit regulates stormwater discharges with BMPs. Due to the variability associated with stormwater, EPA believes the use of BMPs is currently the most appropriate method to regulate discharges of stormwater from municipal systems in accordance with the above referenced regulation.

Water Quality Based Effluent Limitations: Section 402(p)(3)(B)(iii) of CWA authorizes EPA to include in an MS4 permit “such other provisions as [EPA] determine[s] appropriate for control of ... pollutants.” The draft permit includes provisions to ensure that discharges do not cause or contribute to exceedances of water quality standards. The provisions in Parts 2.1 and 2.2 of the draft general permit constitute the water quality-based effluent limitations of the permit. The purpose of these parts of the permit is to establish the broad

inclusion of water quality-based effluent limitations for those discharges requiring additional controls in order to achieve water quality standards and other water quality related objectives. This specifically includes discharges to impaired waterbodies with and without an approved TMDL. These non-numeric effluent limitation requirements of this permit are expressed in the form of additional control measures and BMPs beyond what is required in the MEP section of the draft general permit (Part 2.3).

Requirements To Reduce Pollutant To the Maximum Extent Practicable: The draft general permit sets forth the requirements for the small MS4 to “reduce the discharge of pollutants to the maximum extent practicable (MEP), including management practices, control techniques, and system, design and engineering methods” (See section 402(p)(3)(B)(iii) of the CWA). EPA believes that implementation of best management practices (BMPs) designed to control stormwater runoff from the MS4 is generally the most appropriate approach for reducing pollutants to satisfy the MEP standard. Pursuant to 40 CFR 122.44(k), the draft permit contains BMPs, including development and implementation of a comprehensive stormwater management program (SWMP) as the mechanism to achieve the required pollutant reductions. The small MS4s are required to implement a SWMP that includes the following control measures: public education and outreach; public participation; illicit discharge detection and elimination; construction stormwater management; stormwater management in new development and redevelopment; and good housekeeping in municipal operations. Implementation of the SWMP involves the identification of BMPs and measurable goals for BMPs. The draft permit identifies an objective for each minimum control measure. EPA views the MEP standard in the CWA as an iterative process. MEP should continually adapt to current conditions and BMP effectiveness. Compliance with the requirements of this general permit will meet the MEP standard. The

iterative process of MEP consists of a permittee developing a program consistent with specific permit requirements, implementing the program, evaluating the effectiveness of the BMPs included as part of the program, then revising those parts of the program that are not effective at controlling pollutants, then implementing the revisions, and evaluating again. The changes contained in the draft general permit reflect the iterative process of MEP. Accordingly, the draft general permit contains more specific tasks and details than the 2003 general permit.

Authority: This action is being taken under the Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: September 23, 2014.

H. Curtis Spalding,

Regional Administrator, Region 1.

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